SINGAPORE REPORTS.

KANG WOON GEOK v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.)
August 17, 1949]

[Singapore — Magistrate's Appeal No. 68 of 1949]

Finance Regulations Proclamation No. 150, Regulations 4, 5, 21 — Whether gold nuggets were "gold" within the meaning of the Finance Regulations Proclamation.

The appellant was appointed under the Finance Regulations to be an authorised dealer in gold and one of the conditions of his appointment was that he should sell any bullion purchased, to an authorised dealer bank. The appellant purchased almost pure gold in the form of nuggets, but failed to sell it to an authorised dealer bank, and the question was, whether gold nuggets were "gold" within the meaning of the Finance Regulations Proclamation, which defines "gold" as meaning gold coin or gold bullion. There was some evidence that in the trade gold bullion would be understood to mean gold in the form of bars.

Held, that "gold bullion" is an ambiguous phrase and as it was not properly defined in the Proclamation or the Regulations and as the matter was highly penal, it ought to be construed in the way most favourable to the subject. Accordingly, the conviction was quashed.

Quaere: whether, the Regulations having reserved the power of imposing conditions on the Controller personally, the Controller could in spite of this make use of the powers under the Proclamation and delegate his powers reserved to him under the Regulations.

MAGISTRATE'S APPEAL.

D. K. Walters and *Wee Chong Jin* for the appellant.

A. V. Winslow (Crown Counsel) for the Crown.

The facts and arguments appear sufficiently from the Judgment.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the appellant was convicted on four charges as follows :—

1. That you being an authorised dealer in gold having on or about the 28th June 1946 at Singapore purchased gold for the sum of $46,965.40 cts. from one Kinstler, failed to offer the said gold for sale to an authorised dealer bank in accordance with the terms laid down by the Controller of Foreign Exchange in para. 2 (a) of his letter of authorisation to you dated 15th February 1946 giving directions made by him in exercise of his powers under Regulation 21 of the Finance Regulations Proclamation No. 150, and that you thereby committed an offence under Regulations 4 and 5 of the Finance Regulations Proclamation No. 150 punishable under Regulation 7 of the Finance Regulations Proclamation No. 36.

2. That you being an authorised dealer in gold having on or about 28th June 1946 at Singapore purchased gold for the sum of $46,965.40 cts. from one Kinstler, failed to disclose the amount of gold bought, price paid and name of seller in the Return submitted to the Controller of Foreign Exchange, in accordance with the terms laid down by the Controller of Foreign Exchange in para. 2 (c) of his letter of authorisation to you dated 15th February 1946 giving directions made by him in exercise of his powers under Regulation 21 of the Finance Regulations Proclamation No. 150 and that you thereby committed an offence under Regulations 4 and 5 of the Finance Regulations Proclamation No. 150 punishable under Regulation 7 of the Finance Regulations Proclamation No. 36.

3. That you being an authorised dealer in gold having on or about the 7th December 1946 at Singapore purchased gold for the sum of $32,688.95 cts. from one Kinstler, failed to offer the said gold for sale to an authorised dealer bank in accordance with the terms laid down by the Controller of Foreign Exchange in para. 2 (a) of his letter of authorisation to you dated 15th February 1946 giving directions made by him in exercise of his powers under Regulation 21 of the Finance Regulations Proclamation No. 150, and that you thereby committed an offence under Regulations 4 and 5 of the Finance Regulations Proclamation No. 150 punishable under Regulation 7 of the Finance Regulations Proclamation No. 36.

4. That you being an authorised dealer in gold having on or about the 7th December 1946 at Singapore purchased gold for the sum of $32,688.95 cts. from one Kinstler failed to disclose the amount of gold bought, price paid and name of seller in the Return submitted to the Controller of Foreign Exchange, in accordance with the terms laid down by the Controller of Foreign Exchange in para. 2 (c) of his letter of authorisation to you dated 15th February 1946 giving directions made by him in exercise of his powers under Regulation 21 of the Finance Regulations Proclamation No. 150 and that you thereby committed an offence under Regulations 4 and 5 of the Finance Regulations Proclamation No. 150 punishable under Regulation 7 of the Finance Regulations Proclamation No. 36.

The facts are as follows. The appellant on two occasions bought what appeared to the principal witness to be gold nuggets. These nuggets were tested and the price was fixed by the result of such testing. It appears that what was purchased was refined and the resulting gold entered in the books as pure gold. Evidence was given, quite wrongly, that the seller was convicted in Australia of taking gold out of that country. At that time it was no offence to import gold into this country. It will be remembered that the prosperity of this country is based on the smuggling of rubber-seeds out of Brazil at a time when their export from that country was a serious offence. Whatever the appellant bought he did not offer for sale to an authorised dealer bank. This failure was said to contravene the terms of a letter of the Controller of Foreign Exchange dated February 15th, 1946. This letter was written in exercise of powers under Regulation 21 of the Finance Regulations. These Regulations were made under the powers conferred under the Finance Regulations Proclamation.

The military legislation on the subject begins with Proclamation No. 36, dated December 31st, 1945. This gave the Controller power to make certain regulations :—

"3. — (1) Subject to the provisions of subsection (4) of this section the Controller may make such regulations (in this Proclamation referred to as Finance Regulations) as he may deem expedient in respect of any financial matter.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection finance

regulations may be made for any of the purposes or with respect to any of the matters following, that is to say—

(a) such provisions as the Controller may deem expedient for the purpose of strengthening the financial position of Malaya or any part thereof, and the controlling, restricting, prohibiting or compelling the issue, transfer, purchase, sale, import or export of any currency notes, gold, bills of exchange, promissory notes, securities or other documents and for controlling, restricting, prohibiting or compelling dealings with or payments of any kind or the acknowledgments of any debt to persons resident outside the sterling area and the acquisition by the British Military Administration of any securities;

b) the transfer to or vesting in the Controller upon such terms and in such manner as may be prescribed of any such property as he may deem expedient so to transfer or vest for any of the purpose referred to in subsection (1) of this section and the divesting of any such property;

(c) the regulation, restriction or prohibition of the settlement of any property on, or the exercise of any power of appointment over any property in favour of, any person resident outside the sterling area;

(d) the regulation, control or restriction of the transfer of any trade, business or undertaking carried on in Malaya to persons not resident in Malaya;

(e) the exemption from and imposition of stamp duties in respect of any transaction carried out under such regulations;

(f) the information to be supplied and the books or documents to be produced by any person for the purpose of securing compliance with or detecting evasions of the provisions of any such regulations;

(g) the search of persons about to enter or leave Malaya and the examination of any article found in the possession of such person;

(h) the making of declarations by any person in respect of bank notes, postal orders, gold, securities or currency in the possession of such person and the production thereof;

(i) the boarding of any ship, vehicle or aircraft for the purpose of carrying into effect the provisions of any such regulations;

(j) the production of evidence regarding any transaction affected by any such regulations;

(k) the circumstances in which declarations made under such regulations shall be deemed to be declarations made in a matter relating to customs."

Gold was defined by the Proclamation as gold coin or gold bullion. By section 4 it was provided:—

"The Controller may appoint such Deputy Controllers of Foreign Exchange and Assistant Controllers of Foreign Exchange as he may think fit and may delegate to any such Deputy Controller or Assistant Controller, and such Deputy Controller and Assistant Controller may exercise and perform, such of the powers and such of the duties of the Controller under any such regulations as the Controller may by such appointment authorise."

Under this Proclamation regulations were issued. Of these Regulation 21 is relevant to the present proceedings and reads:—

"21.—(1) The Controller may give general or special directions as to the manner in which, and the terms on which, authorised dealers may dispose of gold and foreign currency acquired by them, and as to the manner in which and the terms on which Banks may dispose of foreign currency acquired by them.

(2) Subject to any exemptions which may be made by order of the Controller and to any permissions which may be granted by the Controller or his deputy, authorised dealers shall dispose of all such gold or foreign currency and Banks shall dispose of all such foreign currency in accordance with such directions."

It should be noted that under Regulation 21 certain powers are given to the Controller and certain to the Controller or his deputy.

The expression "Controller or his deputy" is defined as follows by Regulation 2:—

"The Controller or his deputy" means, in relation to the exercise of any power or the performance of any duty under these Regulations, the Controller or any officer or person generally or specially authorised by the Controller to exercise that power or perform that duty.

At a later date a certain Col. Gore-Harvey was appointed to exercise the powers under section 4 of the Proclamation. On February 15th, 1946, this Col. Gore-Harvey sent a letter to the firm of the appellant. The relevant part for the present purpose is para. 2 which reads:—

"Your particular attention is directed to Regulation 5. The authority now given to you is subject to the following conditions which must be strictly observed:—

(a) All separate gold coins and bullion bought by you must be offered for sale to one or other of the Authorised Dealer Banks, viz:
Chartered Bank of India, Australia and China;
Hongkong & Shanghai Banking Corporation;
Mercantile Bank of India, Limited;
Eastern Bank, Limited.

(b) The price offered by the above banks will be the price notified to them from time to time by the Controller of Foreign Exchange or his Deputy. This price shall be termed the official price.

(c) Weekly returns showing the amount of gold bought, the price paid and the name of seller and the amounts sold by you to the Authorised Bank with the name of the Bank and the amount received must be submitted to this office."

It was signed "A. Gore-Harvey, Lieut. Colonel, for Controller of Foreign Exchange." It is a breach of the conditions of this letter that constitutes the offence, if any, committed by the appellant.

Two points arose: (1) whether, the regulations having reserved the power of imposing conditions on the Controller personally, he could in spite of this make use of the powers under the Proclamation and delegate the powers reserved particularly under the regulations. I gathered that in the opinion of counsel for the respondent that he could not do so. In view of my findings on other aspects of this case it is not necessary to decide this point.

Another point of greater difficulty is the question as to whether what was sold to the appellant can be considered as bullion within the meaning of the Proclamation. The possible meanings of the word are very numerous and some of the meanings are such as are obviously too wide for the purpose. In a matter of

this sort one would expect the word to be used with its trade meaning. Only one of the witnesses, one Tan Beng Chai, called for the prosecution gave any evidence on this point. He said bullion means gold bars; "As far as I know the nuggets bought by defendant do not come in category of bullion". The documents produced in the case, including the letter of February 15th, seem to indicate that gold in bars was what was generally understood by bullion. In view of the very severe penalties attached to offences against the Proclamation and the regulations I think that the terms where they are ambiguous ought to be properly defined. If this is not done I do not think it is open to the prosecution to select any meaning to be found in the dictionary that happens to suit them, e.g. gold lace. In view of this I think that the conviction must be quashed.

Conviction quashed.

HENRY BERSU v. ERNA GUAT KENG LIM.

[Orig. Civ. Juris. (Gordon-Smith, J.) January 25, 1950]

[Singapore — Originating Motion No. 70 of 1949]

Landlord and Tenant — Control of Rent Ordinance, s. 13(1) — Application to vary decision of the Rent Conciliation Board — Standard rent of furnished premises how computed.

A decision as to how the standard rent of a furnished house should be computed.

The facts sufficiently appear from the judgment.

ORIGINATING MOTION.

Philip Hoalim for the Applicant.

Gordon-Smith, J. : — This is a motion by the Respondent under Section 13 (1) of the Control of Rent Ordinance 1947, to vary the decision of the Rent Conciliation Board has been estabished under Section 8 of the Ordinance, on the grounds that such decision is wrong in law.

Such decision is in writing and is dated the 9th December 1949. The premises in question are known as No. 1–8 First Avenue, off Bukit Timah Road and had been the subject of a tenancy agreement between the parties whereby the premises had been let in 1947 to the tenant Henry Bersu (the Applicant) for a period of 2 years certain as from the 1st June 1947 at an inclusive rent of $320.00 per month together with an option to renew the tenancy for a further 2 years at a rent to be agreed between the parties. The learned President found as a fact that, although there had been an old house on the site pre-war, the house had been entirely rebuilt and states "It is, I think, clear from the evidence that the alterations carried out by the Respondent were so substantial that the house as a whole could not be said to be the same house as existed in 1941. The house as a whole, to use a common expression has lost its identity." He agreed that the premises were "new" premises.

As the parties were unable to agree on the amount of rent to be paid, under the option renewal clause, the tenant applied to the Board under Section 9(3) of the Ordinance to fix the rent. The learned President, on such application, fixed the rent at $200.00 a month for the house and a further $50.00 a month for hire of the furniture, i.e. a combined rent of $250.00 per month as against $320.00 which the Tenant had been previously paying under his agreement.

In the Ordinance "rent" and "standard rent" are defined as follows :—

"Rent" includes any sum paid as rent or hire for the use of furniture where premises are let furnished or where premises are let and the furniture therein is hired by the landlord to the tenant;

"Standard rent" means —

(a) if the rent has been fixed by the Board prior to the commencement of this Ordinance, the rent so fixed,

(b) if the rent has not been fixed by the Board prior to the commencement of this Ordinance, the rent of the premises as at the 1st day of August, 1939; or in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after the 1st day of August, 1939.

On the facts as found by the learned President, it is clear that this tenancy agreement in 1947 was "a first letting" at the combined rent of $320.00 for the premises and furniture and that such amount was therefore the "standard rent." The learned President also found as a fact that the value of the furniture hired was $3,000.00 and fixed the rent of the same at $50.00 per month, i.e. 1/60th of such value as in para. (b) of Section 3 (2) of the Ordinance. Accepting this figure as he did, he should have deducted this $50.00 from the $320.00 (combined rent) in order to arrive at the Standard Rent of the premises alone, i.e. without the hire of the furniture, which makes such Standard Rent $270.00.

On his own findings, therefore, the learned President should have found that the combined rent, which it was permissible for the Landlord to charge, was $270.00 + $50.00 = $320.00 and which was the amount the Landlord was asking for and which was the amount that had been paid since the commencement of the tenancy. It seems to me clear that the Standard rent of the premises alone is $270.00 per month and with the amount for hire of the furniture permissible under Section 3 (2) of the Ordinance